

VZCZCXR08616

PP RUEHAG RUEHAST RUEHDA RUEHDBU RUEHDF RUEHFL RUEHIK RUEHKW RUEHLA
RUEHLM RUEHLZ RUEHNP RUEHPOD RUEHROV RUEHSK RUEHSR RUEHVK RUEHYG
DE RUEHBM #0397/01 1660917

ZNR UUUUU ZZH

P 150917Z JUN 09

FM AMEMBASSY BUCHAREST

TO RUEHC/SECSTATE WASHDC PRIORITY 9599

INFO RUEHZN/EUROPEAN POLITICAL COLLECTIVE PRIORITY

RUCPDOC/DEPT OF COMMERCE WASHINGTON DC PRIORITY

UNCLAS SECTION 01 OF 03 BUCHAREST 000397

SENSITIVE

DEPT FOR EUR/CE ASCHIEBE, EEB/IFD/OIA HGOERTHER AND KBUTLER, AND
L/CID DMORRIS AND PPEARSONSALL
STATE PLEASE PASS TO USTR

SIPDIS

E.O. 12958: N/A

TAGS: EINV CASC KIDE OPIC PGOV RO

SUBJECT: ROMANIA: 2009 REPORT ON INVESTMENT DISPUTES AND
EXPROPRIATION CLAIMS

REF: STATE 49477

¶11. (U) Summary: The United States Government is aware of eight (8) outstanding investment disputes and expropriation claims brought by United States persons or corporations that may be pending against the Government of Romania (GOR). There are no new cases since last year's report. Post recommends dropping one case (Claimant G in the 2008 report) because the claimant actually has received title to the property. At the time of last contact the claimant was trying to correct errors in the property title, but because claimant was granted the title it no longer qualifies as an expropriation case. Post has removed this claimant from the current report. Claims previously reported that are subject to the 1960 claims settlement agreement between the U.S. and Romania are no longer included in this report. Names/titles of claimants are listed in paragraph 10. End Summary.

¶12. (U) a. Claimant designation: Claimant A

b. Year dispute arose: 1990

c. Case history: In the 1970s, Claimant A entered into a reinsurance agreement with the Romanian state-owned insurance company ADAS. In 1990, the Romanian Government dissolved ADAS and created two new companies, ASTRA and ASIROM. ASIROM was privatized. ASTRA remained a state-owned company and denied any liability regarding Claimant A's contract with ADAS. An arbitration panel awarded Claimant A USD 650,000 in 1993. ASTRA refused to recognize the legitimacy of the arbitration panel and to make any payments.

Claimant A sued to enforce the award in an Ohio District Court. In 1999, the District Court ruled that after ADAS was dissolved, its obligations were assumed by ASTRA. The district court awarded Claimant A over USD 922,000, which included the original arbitration award plus interest and legal costs. The amount owed to Claimant A continues to increase to include additional interest and legal costs associated with enforcing the arbitration award. Claimant A recovered USD \$39,000 in 1999 and USD \$185,000 in 2000 by garnishing funds held for ADAS/ASTRA in the United Kingdom.

In September 2002, the Ohio District Court ruled that the Government of Romania was the alter-ego of ASTRA/ADAS and that the 1999 judgment against ASTRA/ADAS could be executed against the GOR. Following this decision, Claimant A sued Banca Comerciala Romana (BCR), Romania's state-owned bank and the only Romanian state-owned entity with assets in the United States, in the U.S. District Court for the Southern District of New York in March 2004, claiming that BCR is the alter-ego of the GOR and must pay Claimant A its remaining damages. In preparation for privatization on December 2005, BCR transferred the file to the Romanian Authority for State Assets Recovery (AVAS) to administer the asset recovery dispute. The claim is still outstanding. Embassy's last contact with Claimant A was in 2007.

13. (U) a. Claimant designation: Claimant B
b. Year dispute arose: 1981
c. Case history: In 1981, Claimant B signed a purchase agreement with state-owned firm Masinexportimport, using irrevocable letters of credit. Claimant B rejected the goods, alleging that they did not meet the quality standards specified in the purchase agreement. Claimant B sued Masinexportimport in U.S. Federal District Court in 1982. In 1991, the District Court determined that Masinexportimport was an instrumentality of the Romanian Government and it owed Claimant B USD \$1.5 million in damages. Because neither Masinexportimport nor the GOR paid the claim, the Claimant took the case to the International Court of Arbitration. No decision has been rendered. Masinexportimport claims that Claimant B lost the right to execute the claim after three years, and therefore no longer has a legal basis for its claim under Romanian law.

14. (U) a. Claimant designation: Claimant C
b. Year dispute arose: 2001
c. Case history: Before the 1989 Romanian Revolution, Constanta Oil Terminal was owned by the GOR. By government decision in 1990, the oil terminal was privatized as a commercial company and listed on the Bucharest Stock Exchange. Claimant C purchased 11.66 percent of the shares in the Oil Terminal. In 2001, the GOR transferred certain pipeline assets owned by the Oil Terminal to state ownership. The owners were not compensated for this transfer. The expropriated pipeline assets were valued at more than USD 20 million and constituted approximately 80 percent of the company's capacity for transporting oil. After the expropriation, the Oil Terminal was forced to enter into a concessionary agreement with the GOR to use the pipeline assets that the Claimant had previously owned. The Bucharest Stock Exchange suspended trading of the shares in the Oil Terminal, and the stock lost 50 percent of its value.

BUCHAREST 00000397 002 OF 003

In 2003, the Claimant submitted an application to the European Court of Human Rights (ECHR) against GOR based on the pipeline asset expropriation and the Claimant's failure to obtain compensation through action in Romanian courts. The ECHR accepted Claimant C's case in 2007 and requested that the GOR draft an official position paper, with the aim of reaching an amicable solution. At last report the submission of the GOR's position paper was still pending, but this cannot be confirmed as the Claimant has not been in contact with the Embassy regarding the dispute for the last two years.

15. (U) a. Claimant designation: Claimant D
b. Year dispute arose: 2000
c. Case history: Claimant D purchased a Romanian company in a debt-for-equity swap and received government assurances that its overpayment would be applied to future taxes. Elections in 2000 resulted in a change of government, and, according to the investor, the new government refused to honor its predecessor's commitments. The company filed for bankruptcy in 2004. As of June 2009, the judicial liquidator has organized 40 auctions for sale of assets. According to the liquidator, Claimant D consists of a company and individual creditor. Both have received partial compensation from these actions (the former approximately USD \$1.3 million and the latter USD \$1.01 million). Both are still owed the following amounts: approximately USD \$19 million and USD \$7.497 million, respectively. Further public auctions are planned. The Claimant has not been in contact with the Embassy regarding the dispute.

16. (U) a. Claimant designation: Claimant E
b. Year dispute arose: 2003
c. Case history: In November 2003 Claimant E acquired a majority stake in a Romanian company that produced explosives and fertilizer. The privatization contract governing the acquisition included as a precondition the fulfillment of the debt-for-equity swap of company's arrears to energy companies. The GOR claims to have received the Claimant's written waiver of the precondition. Because of overdue debts, the Romanian company was put under judicial reorganization under Romanian insolvency law.

In 2005, the GOR terminated the privatization contract and seized the Claimant's shares, contending that the Claimant was in breach of contract. The Claimant filed for international arbitration with the

ICSID on July 16, 2007. The tribunal was constituted in November 2007 and held a first session in December 2007. According to ICSID public reports, the tribunal was reconstituted on April 28, 2009 and remains pending. The Embassy's last direct contact with the Claimant was in 2007.

¶7. (U) a. Claimant designation: Claimant F
b. Year dispute arose: 2004
c. Case history: In 2004 Claimant F acquired through a privatization contract an off-road vehicle manufacturing company. The GOR moved to release the company from past budgetary arrears as agreed in the privatization contract. Because of unsettled non-budgetary arrears to state-owned energy companies, the company was put under judicial reorganization under Romanian insolvency law. Having failed to get an amicable resolution of the issues, the Claimant announced its intent to file for international arbitration with ICSID, but has not yet done so. In the meantime, AVAS has tendered and sold assets of the plant to local companies. The Embassy's last contact with the Claimant was in 2007.

¶8. (U) a. Claimant designation: Claimant G
b. Year dispute arose: 2001
c. Case history: Claimant G filed for compensation in 2001 for two properties located in Bucharest. The properties had been taken from her family in 1970 and the structures were demolished. The Claimant is the adoptive daughter and sole legal heir of the properties' original owner. The Claimant's claim was forwarded in 2002 to the Bucharest City Hall. In 2004, Bucharest City Hall issued a notification that the Claimant had not adequately proven she was the original owner's legal heir. The Claimant appealed this decision, as well as a subsequent denial notification, to the High Court of Cassation and Justice in the same year. The Court ordered the City to recognize the claim and pay compensation. No such compensation has been paid as of June 2008. The case is still pending.

The Claimant's attorney alleges that she was asked to pay a bribe in order to obtain a decision favorable to the Claimant. The Claimant called the Romanian Embassy in Washington, D.C. and was advised not to pay the bribe. After declining to pay the alleged bribe, the Claimant received a denial letter from the Mayor's office based on "lack of evidence of legal inheritance." The Claimant filed a complaint with the National Anticorruption Department (DNA) and appealed the decision to the Supreme Court. The Supreme Court repealed the decision of the City Hall and ordered that City Hall

BUCHAREST 00000397 003 OF 003

re-examine the claim. The Embassy's last contact with the Claimant was in August 2008.

¶9. (U) a. Claimant designation: Claimant H
b. Year dispute arose: 1973
c. Case history: Claimant H filed a notification with the Timisoara City Hall in November 2001, requesting restitution of a house and land in Timisoara (total of 900 sqm) taken by the state in 1963. In June 2006, the Timisoara City Hall issued a decree ("Disposition") number 1690, stating that the Claimant is entitled to compensation as the property could not be returned "in integrum." The property in question belonged to an owner who acquired it by property exchange in 1973, when the state nationalized her property in order to expand the local radio station and moved her into the property formerly owned by the Claimant's family. The current owner also had to pay the state a certain amount of money in addition to turning over the nationalized property. The Timisoara City Council recommended compensation up to Euro 400,000, the amount indicated by the Claimant. The City offered the Claimant compensation in the form of shares of the State Property Fund, but the claimant wanted restitution in the form of another property of equal value. The Claimant sued the Timisoara City Council, lost the case in the lower court, and filed an appeal in April 2008. The Embassy's last contact with the claimant was in August 2008.

¶10. (SBU) Claimant A: General Star National Insurance Company
Claimant B: S&S Machinery Corporation
Claimant C: Broadhurst Investments, Ltd (New Century Holdings)
Claimant D: Wisconsin Turning Systems represented by creditors-
PALCROM LLC U.S. and Patrick Cherone

Claimant E: S&T Oil Equipment and Machinery Ltd.
Claimant F: Cross Lander
Claimant G: Maria Grigorescu
Claimant H: Andrew Scheer

GUTHRIE-CORN